

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, April 15, 1998

DIVISION TWO

A078228 -- The People v. Thomas Waltermán Douglas.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J.
(Not for Publication.)

A081306 -- In re Christopher C., a Person Coming Under the Juvenile Court Law.

We find no meritorious issues to be argued. Kline, P.J. We concur:
Haerle, J., Ruvolo, J. (Not for Publication.)

A082335 -- In re Armando Abreu Aceves, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied without prejudice. Petitioner should first seek review on the merits of his petition in Del Norte County Superior Court. Kline, P.J.

DIVISION THREE

A079643 -- In re Thomas C., a Person Coming Under the Juvenile Court Law.

AFFIRMED. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J.
(Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, April 15, 1998

The Court met at 9:30 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Kline, P. J., Lambden, J., Ruvolo and S. Graham, Deputy Clerk.

A077088 Sandra J. Sloan, et al.
v.

John Crane, Inc.

A077552 Sandra J. Sloan, et al.
v.

John Crane, Inc.

Causes called and argued by Robert Nelder, counsel for appellant and Harry Wartnick, counsel for respondent. Counsel for appellant granted 10 days to file a supplemental letter brief addressing the sanctions issue. Counsel for appellant granted 5 days thereafter to reply. The cause will be deemed submitted upon receipt of the supplemental briefing.

A077542 The People,
v.

David Brian Denison

Cause called and argued by Alan Siraco, counsel for appellant, and Gregory Ott, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A078371 The People,
v.

Michael Edward Stanley

Cause called and argued by Philip McGough, counsel for appellant, and Ken Young, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

A079101 The People
v.

Ken Frank Cardoza

Cause called and argued by Joan Isserlis, counsel for appellant and Clifford

Thompson, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A076156 Frank Gutierrez
v.
Cassiar Mining Corp.
Cause called and argued by Thomas Mikula, counsel for appellant and James Oberman, counsel for respondent. Cause ordered submitted.
At this point in the proceedings, Justice Kline left the bench and Justice Ruvolo joined the bench.

A076563 Michiko Zepeda, et al.
v.
T. Y. Lin International, Inc.
Cause called and argued by Russell Brasso and Myron Moskovitz, counsel for appellants and Robert King, counsel for respondent. Cause ordered submitted.

A075598 Lennar Homes, Inc.
v.
Royal Specialty Underwriting, Inc., et al.
Cause called and argued by Eugene Stuart, counsel for appellant and Thomas Holden, counsel for respondent. Cause ordered submitted.
Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, April 16, 1998

DIVISION ONE

A078598 -- The People v. Melissa Dawn Millard.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A080403 -- The People v. Antoine Dovell Austin.

The judgment is affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A075154 -- The People v. Jeffrey Payton Bryden et al.

A080988 -- In re Joaquin Leon Padin on Habeas Corpus.

We affirm the judgment regarding both defendants, and deny Padin's petition for habeas corpus relief. Lambden, J. We concur: Kline, P.J., Haerle, J. (Certified for Partial Publication.)

DIVISION THREE

A077143 -- Linda Lee et al. v. State Farm Fire and Casualty Company.

The judgment is affirmed. State Farm shall recover its costs on appeal. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

Thursday, April 16, 1998 (continued)

A081767 -- City and County of San Francisco v. Mike Manuel.

The purported appeal is dismissed. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A077514 -- The People v. Ernesto Anguiano.

The judgment is affirmed. Poché, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

DIVISION FIVE

A080194 -- The People v. Vinh Tran.

The judgment is affirmed. Peterson, P.J. We concur: Haning, J., Jones, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, April 17, 1998

DIVISION THREE

A076192 -- The People v. Leon Loren Tuttle, et al.

By The Court: The petition for rehearing is denied. Phelan, P.J.

DIVISION FOUR

A078842 -- Sally Y., et al v. Clayton, Williams & Sherwood et al.

We affirm the judgment of dismissal. Reardon, J. We concur: Hanlon, P.J., Poché. (Not for Publication.)

A079336 -- The People v. Marvin Alberto Lopez-Oylas.

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., McGuiness, J. (Not for Publication.)

A079730 -- In re the Marriage of Julie Major and Tibor E. Major.

The order for payment of additional spousal support is reversed, with costs to appellant. Hanlon, P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

Friday, April 17, 1998 (continued)

DIVISION FIVE

A078626 -- Stephen A. Zimmerman v. San Francisco Police Officers Association et al.

We affirm the trial court's decision with respect to SEIU. With respect to SFPOA, we reverse the trial court's decision sustaining the demurrer without leave to amend and remand with instructions to grant Zimmerman leave to amend his first amended complaint for the limited purpose of attempting to state a cause of action for breach of the duty of fair representation based only on SFPOA's alleged failure to pursue his grievances as described in paragraphs 11 and 13 of the first amended complaint except that the newly amended complaint may not allege a breach of the duty of fair representation based on the alleged November 1992 transfer. In all other respects, we affirm the trial court's ruling with respect to SFPOA. The parties are to bear their own costs on appeal.

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Friday, April 17, 1998

The Court met at 9:30 a.m. for a special session at the Sonoma County Courthouse, courtroom 2, 600 Administration Drive, Santa Rosa. Present: Kline, P. J., Lambden, J., Ruvolo and I. Santos, Deputy Clerk.

- A079372 Linda Potts,
v.
Tom Crawford.
Cause called and argued by Susanne Reed, counsel for appellant, and James Bertoli, counsel for respondent. Cause ordered submitted.
- A080063 Linda Ford,
v.
Lorie Pacini et al.
Cause called and argued by Joseph Turri, counsel for appellant, and James R. Mayo, counsel for respondent. Cause ordered submitted.
- A078670 Enrique C. Perez,
v.
Angelita D. Nicer.
Cause called and argued by Craig Murdock, counsel for appellant, and Jason Curliano, counsel for respondent. Cause ordered submitted.
- A080248 McDonald's Corporation,
v.
Board of Supervisors, County of Mendocino.
Cause called and argued by Yves Hebert, counsel for appellant, and Kevin Kelley, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J. and I. Santos, Deputy Clerk.

A078517 Albert L. Russ et al.,
 v.
 George K. Perkins et al.
Cause called and argued by Michael McCracken, counsel for appellant, and James R. Rose, counsel for respondent. Cause ordered s submitted.

At this point in the proceedings, Justice Kline left the bench and Justice Ruvolo joined the bench.

A075456 Rosalba Cortez,
A078523 v.
 Purolator Air Filtration Products Co.
Cause called and argued by Cameron Cunningham, counsel for appellant, and Tom Nunziato, counsel for respondent. Cause ordered submitted.

A078588 Jon C. Fretland,
 v.
 County of Humboldt et al.
Cause called and argued by Bradford Floyd, counsel for appellant, and Michael Balavage, counsel for respondent. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, April 20, 1998

DIVISION TWO

A078240 -- The People v. James Cato.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Lambden, J.
(Not for Publication.)

DIVISION THREE

A076845 -- Robert L. Day et al. v. AT&T Corporation et al.

The trial court's orders sustaining respondents' demurrers and dismissing appellants' first amended complaint are reversed. The matter is remanded for further proceedings on appellants' claim for an injunction, but not on their claim for restitution under sections 17203 and 17535. Appellants to recover costs on appeal. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Certified for Publication.)

A079847 -- The People v. Carol Ferguson.

We have reviewed the entire record and have found no arguably meritorious issues to raise on appeal. Consequently, the judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

Monday, April 20, 1998 (continued)

DIVISION FOUR

A078204 -- Henry McGee et al. v. City of Oakland.

The judgment is affirmed. Appellants to bear costs of appeal. McGuiness, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A079177 -- In re Reginald S., a Person Coming Under the Juvenile Court Law.

The order terminating appellant's parental rights is affirmed. McGuiness, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A080412 -- In re Christina M., a Person Coming Under the Juvenile Court Law.

The order is affirmed. McGuiness, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, April 21, 1998

DIVISION ONE

A076226 -- Michael Fabianac et al. v. The Hertz Corporation et al.

The judgment is reversed and the case remanded to the trial court for further proceedings consistent with the views expressed in this opinion. Costs are awarded to appellants. Stein, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

A077664 -- Waste Management of Alameda County, Inc. v. Biagini Waste Reduction Systems, Inc.

The judgment is affirmed. Costs are awarded to respondent. Swager, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

A079913 -- Full Association Business Service, Inc., et al. v. Keys Condominium Owners' Association, Inc., et al.

The order disqualifying appellant's counsel is affirmed, and the matter is remanded to the trial court. Stein, Acting P.J., We concur: Dossee, J., Swager, J. (Not for Publication.)

DIVISION TWO

A075256 -- The People v. Armando Veliz.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Tuesday, April 21, 1998 (continued)

A077978 -- The People v. Jonathan Joseph Larry.

The judgment is affirmed. Haerle, J. We concur: Lambden, J., Ruvolo, J.
(Not for Publication.)

A082386 -- In re Eugene Cate, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied without prejudice to petitioner seeking relief in Siskiyou County Superior Court. Kline, P.J.

DIVISION FIVE

A080395 -- The People v. Michael David Reynaga.

The judgment is affirmed. Haning, J. We concur: Peterson, P.J., Jones, J.
(Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION THREE

Tuesday, April 21, 1998

Court convened at 1:30 p.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Phelan P.J., Corrigan, J., Parrilli, J., and J. Casados, Deputy Clerk.

- A077757 The People,
 v.
 Andre Lamont Ray.
 Cause called and argued by Raymond Cardozo, Deputy Attorney General,
 counsel for appellant, and Theodore Cassman, counsel for respondent.
 Cause ordered submitted.
- A077838 Insurance Company of North America,
 v.
 Air Canada.
 Cause called and argued by John H. Quinn, counsel for appellant, and
 Marcy Berkman, counsel for respondent. Cause ordered submitted.
- A076102 Viable Alternatives Consultants, Inc.
 v.
 Paradox Corporation et al.
 Cause called and argued by Cindy Cohn, counsel for respondents, and
 Michelle A. Firpo, counsel for appellant. Cause ordered submitted.

Court adjourned.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, April 22, 1998

DIVISION ONE

A078181 -- The People v. Edward Arnold Parker.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A079036 & A079325 -- The People v. Esteban M. Burrigos.

The judgments are affirmed. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

A081907 -- Christine S. v. The Superior Court of Sonoma County, Sonoma County Human Services Department et al., R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024; *Kowis v. Howard* (1992) 3 Cal.4th 888; and § 366.26, subd. (l), precluding further challenge to these orders by petitioner in any subsequent appeal.)

The request for stay of the section 366.26 hearing which is set for May 13, 1998, is denied, and this opinion is final as to this court immediately. Strankman, P.J. We concur: Stein, J., Swager, J. (Not for Publication.)

Wednesday, April 22, 1998 (continued)

DIVISION TWO

**A073127 -- Bay Area Land Watch v. County of San Mateo et al.,
Watson Communication Systems, R.P.I.**

Accordingly, the judgment is reversed and the cause remanded with directions to the trial court to issue a writ of mandate directing respondent County to set aside its certification of the final EIR and its approval of the amendment to the HCP and to cause to be prepared and circulated for public comment in accordance with CEQA a supplemental EIR containing a legally sufficient cumulative impacts analysis. Costs on appeal are awarded to appellants, apportioned as follows: Watson is to pay 90 percent of costs; the County to pay 10 percent. (Cal. Rules of Court, rule 26(a).)²⁰ Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

A074012/A075621 -- Mark Hankins v. El Torito Restaurants, Inc., et al.

The portion of the judgment enjoining El Torito from “keeping the ‘lift’ ...locked in such a manner as to require the lift to be unlocked or actuated by Defendants management or other employee personnel” is reversed and remanded for further proceedings consistent with this decision. Should the trial court determine, after considering El Torito’s past and present policies regarding access to and operation and usage of the lift, that an injunction should not issue, it may reconsider the amount of attorney’s fees previously awarded. In all other respects, the judgment is affirmed. Each party is to bear his or their own costs on appeal. Haerle, Acting P.J. We concur: Lambden, J., Ruvolo, J. (Certified for Partial Publication.)

DIVISION THREE

A074254 -- The People v. Thomas A. Wright

The judgment is affirmed. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

Wednesday, April 22, 1998 (continued)

A077076 -- Hal C. Aguirre Co. v. City of Sonoma et al.

The judgment is affirmed. Costs to respondents. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A077548 -- The People v. Marvin Owen Campbell.

Campbell's counsel has filed a brief raising no issues, and asking us for an independent review under *People v. Wende* (1979) 25 Cal.3d 436. We have reviewed the record and we agree with counsel that there are no arguable issues, and affirm the judgment. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A078758 -- Union of American Physicians & Dentists et al. v. Alameda County Health Care Services Agency et al.

A079570 -- Union of American Physicians & Dentists et al. v. Alameda County Health Care Services Agency et al.

A081048 -- Robert Karis et al. v. Alameda County Health Care Services Agency et al.

In appeal No. A078758, we affirm the trial court's holding that the contracts were impermissible for the reason that the County's civil service provisions barred the OakCare and Primary Medical Associates contracts. We need not decide the other issues raised by the parties in the appeal or cross-appeal.

In appeal No. A079570, we reverse the trial court's judgment. Although the trial court determined that Health and Safety Code section 1451 permitted the contracts, neither that section nor the County's charter specifically permits the County to enter into contracts contrary to the civil service requirements contained in the County charter. Accordingly, we remand to the trial court for proceedings consistent with this decision.

In appeal No. A081048, we affirm the trial court.

The Union is entitled to costs in these appeals. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Wednesday, April 22, 1998 (continued)

DIVISION FOUR

A078260 -- The People v. Alex Thomas.

The judgment of conviction is affirmed. Poché, Acting P.J. We concur: Reardon, J., McGuiness, J. (Not for Publication.)

DIVISION FIVE

A078272 -- Gordon Vann v. Travelers Indemnity Company et al.

The judgment is affirmed. Haning, J. I concur: Jones, J. See Dissenting Opinion of Peterson, P.J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, April 23, 1998

DIVISION ONE

A080032 -- Kraft General Foods, Inc. v. Khalil Salah.

The order is affirmed. Salah is entitled to his appellate costs and, pursuant to Civil Code section 1717, to attorney fees incurred by him in responding to Kraft's appeal. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A080891 -- The People v. Luis Antonio Rivera.

The judgment is affirmed. Strankman, P.J., We concur: Stein, J., Swager, J. (Not for Publication.)

DIVISION TWO

A077542 -- The People v. David Brian Denison.

The judgment is affirmed. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Certified for Publication.)

A077644 -- In re Amanda V. et al., Persons Coming Under the Juvenile Court Law.

The orders are affirmed. Kline, P.J. We concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Thursday, April 23, 1998 (continued)

A078915 -- In re Rodney J.P., a Person Coming Under the Juvenile Court Law.

The judgment of the trial court is affirmed. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A080611 -- The People v. Pamela June Wright Brown.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FIVE

Thursday, April 23, 1998

Court convened at 9:30 a.m. in its Courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Peterson, P.J.; Haning, J.; Jones, J.; and Richard H. Sandvik, Deputy Clerk.

- A072522 Patricia A. McColm
 v.
 City and County of San Francisco
 Cause called and argued by Patricia A. McColm, in pro per, via
 teleconference, and by William M. Fleishhacker, counsel for respondents.
 Cause ordered submitted.
- A080011 Craig Battuello
 v.
 Ellen Battuello et al.
 Cause called and argued by Lisa M. Carvalho, counsel for appellant, and by
 James R. Rose, counsel for respondents. Cause ordered submitted.
- A076193 In re the Marriage of Olga and James Disney
A077868 Olga Disney
 v.
 James Harrison Disney
 Cause called and argued by James H. Disney, in pro per, and by Bernard N.
 Wolf., counsel for respondent. Cause ordered submitted.
- A080173 John Walter Simpson, et al.
 v.
 County of Solano
 Cause called and argued by Frederick W. Stephenson, counsel for
 appellants, and by Wendy Getty, Deputy County Counsel, counsel for
 respondent. Cause ordered submitted.

- A080286 John Walter Simpson, et al
v.
State of California
Cause called and argued by Frederick W. Stephenson, counsel for appellant, and by Stephen J. Egan, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A079488 In re Wendy L., a minor.
Napa County Health and Human Services
v.
Mary L.
Cause called and argued by Carole Greeley, counsel for appellant, and by Silva Darbinian, Deputy County Counsel, counsel for respondent. Cause ordered submitted.
- A079841 In re Reuel D., a minor.
The People
v.
Reuel D.
Cause called and argued by Harvey Sniderman, counsel for appellant, and by Amy Haddix, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A079645 In re Timothy A., a minor.
The People
v.
Timothy A.
Cause called and argued by, Carol Bishart-Sani, counsel for appellant, and by Amy Haddix, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A078999 The People
v.
Lester Parham
Cause called and argued by Walter Pyle, counsel for appellant, and by Sharon Birenbaum, Deputy Attorney General, counsel for respondent, who argued via teleconference. Cause ordered submitted.

Court adjourned at 1:00 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Friday, April 24, 1998

DIVISION ONE

A078670 -- Enrique C. Perez v. Angelita D. Nicer.

The judgment of the trial court sustaining respondent's demurrer without leave to amend is affirmed. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

DIVISION TWO

A076077 -- The People v. Alex D. Ross.

A081371 -- In re Alex Deon Ross, on Habeas Corpus.

The judgment is modified to strike the five-year term imposed under section 667, subdivision (a), and the matter is remanded for resentencing. Upon remand, the trial court shall exercise its discretion with respect to vacating the stay imposed with respect to the one-year prior prison term enhancement under 667.5, subdivision (b). The trial court is ordered to amend the abstract of judgment accordingly and forward a certified copy to the Department of Corrections. In all other respects, the judgment is affirmed. Appellant's request for habeas corpus is denied for failure to state a prima facie case for relief. Ruvolo, J. We concur: Kline, P.J., Lambden, J. (Not for Publication.)

A080568 -- The People v. Anthony Mendez.

The judgment is affirmed. Ruvolo, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, April 27, 1998

DIVISION ONE

A075771 -- National Distribution Agency v. Jere Van Puffelen et al.

Accordingly, the judgment is affirmed. The parties are to bear their own costs on appeal. Swager, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

A077043 -- Houston General Insurance Company v. Louis J. Ocken.

In view of our decision to reverse the summary judgment, we do not reach Houston General's contention that the belated discovery of the settlement agreement between Ocken, California Casualty and Generali gave it grounds to secure a reconsideration of the trial court's order through a motion for new trial.

The judgment is reversed.

Costs are awarded to appellant. Swager, J. We concur: Strankman, P.J., Dossee, J. (Not for Publication.)

DIVISION TWO

A079101 -- The People v. Ken Frank Cardoza.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Haerle, J. (Not for Publication.)

A080063 -- Linda Ford v. Lorie Pacini et al.

We affirm that order. Respondents are awarded their costs on appeal Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Monday, April 27, 1998 (continued)

A080248 -- McDonald's Corporation v. Board of Supervisors, County of Mendocino.

The judgment is affirmed. Kline, P.J. We concur: Lambden, J., Ruvolo, J. (Certified for Publication.)

DIVISION THREE

A075341 -- Robert O. Marocco v. Fidelity and Deposit Company of Maryland et al.

The judgment is affirmed. Costs to respondent. Parrilli, J. We concur: Phelan, P.J., Walker, J. (Not for Publication.)

A064778 -- The People v. John Malone.

The judgment is affirmed. Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

DIVISION FOUR

A079999 -- The People v. Kel Paige Magee.

The judgment is affirmed. Poché, Acting P.J. We concur: Reardon, J., McGuinness, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Tuesday, April 28, 1998

DIVISION ONE

A081747 -- In re Vanessa W., a Person Coming Under the Juvenile Court Law.

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd., v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for April 29, 1998. Therefore, our decision is final in this court immediately. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A082438 -- In re Todd Lee Johnson, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

DIVISION THREE

A072015 -- Unisys Corporation v. California Life and Health Insurance Guarantee Association.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Certified for Publication.)

Tuesday, April 28, 1998 (continued)

A073435, A076718, A076876 -- In re the Marriage of Linda Steffan and George Cooper.

The appeals are dismissed. The motions for sanctions are denied. Husband and Lancelle shall recover their costs on appeal, and their attorneys' fees in an amount to be determined by the trial court on remand. Parrilli, J. We concur: Corrigan, Actg. P.J., Walker, J. (Not for Publication.)

A076614 -- The People v. Marcus Teague.

The judgment is affirmed. Corrigan, Act. P.J. We concur: Parrilli, J., Walker, J. (Not for Publication.)

A077979 -- The People v. Sean E. McCaffrey.

The judgment is affirmed. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

DIVISION FIVE

A078514 -- Saeed M. Safieslamy v. Robert T. Levine.

The judgment dismissing the third, fourth, and fifth causes of action is reversed. The judgment is otherwise affirmed. Each party to bear his own costs on appeal. Haning, J. We concur: Peterson, P.J., Jones, J. (Not for Publication.)

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION FOUR

Tuesday, April 28, 1998

Court convened at 9:30 a.m. in its courtroom at 303 Second Street, South Tower, Fourth Floor, San Francisco, California. Present: Hanlon, P.J., Reardon, J. and McGuiness, J.; Channing Hoo, Deputy Clerk; CHP Officer C. Reese, Baliff.

- A074863 People
 v.
 Stephen Ho
Cause called and argued by Dennis Riordan, counsel for appellant Ho, and by Mark Howell, counsel for respondent. Cause ordered submitted.
- A079328 People
 v.
 Andre Spencer
Cause called and argued by Peter Gold, counsel for appellant Spencer, and by Jeremy Friedlander, counsel for respondent. Cause ordered submitted.
- A079589 RMT Landscape Contractor, Inc.
 v.
 City of San Leandro
Cause called and argued by Arthur Lempert, counsel for appellant RMT, and by Michael London, counsel for respondent. Cause ordered submitted.
- A07847 People
 v.
 Maria Eleno-Palaad Luna et al.
Cause called and argued by Carol Strickman, counsel for appellant Luna, and by Linda Murphy, counsel for respondent. Counsel for appellant Kim had earlier waived oral argument. Cause ordered submitted.

At this point, the court reconstituted itself to include Hanlon, P.J., Poche, and Reardon, J.

A068802

People

v.

Joshua Harvest

Cause called and argued by Scott A. Sugarman, counsel for appellant Harvest, and by Jeremy Friedlander, counsel for respondent. Cause will be submitted upon receipt of the videotape transcript.

The court recessed at 11:57 a.m.

Courtroom Minutes
Division 4
Tuesday April 28, 1998

Court reconvened at 2:00 p.m. in its courtroom at 303-2nd Street, 4th Floor,
San Francisco. Present: Poche, Actg.P.J., Reardon, J., McGuiness, J., Jim
Campbell, Deputy Clerk and CHP Officer C. Espinosa, Bailiff.

A076539 Lashun Moore,
 plaintiff/appellant
 v.
 Rochester Midland, Inc. et al.,
 defendants/respondents

Cause called. Margaret Roeckl argued on behalf of appellant Lashun Moore.
Michael Foster argued on behalf of respondents. Cause submitted.

A077955 Friends of Marina Del Rey et al.,
 plaintiffs/appellants
 v.
 California Coastal Commission et al.,
 defendants/respondents

Cause called. Larry Silver argued on behalf of appellants Friends of Marina del
Rey et al.. Patricia Peterson., argued on behalf of respondents. Cause submitted.

The Court adjourned at 3:00 p.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Wednesday, April 29, 1998

DIVISION ONE

A079826 -- The People v. Daniel Runsted.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

DIVISION TWO

A077872 -- Larry Guevara v. The Regents of the University of California.

The judgment is affirmed. Haerle, J. We concur: Kline, P.J., Ruvolo (Not for Publication.)

A082482 -- In re Romerico Remeidio, on Habeas Corpus.

By The Court: The petition for writ of habeas corpus is denied. Kline, P.J.

DIVISION THREE

A075039 -- Josephine Rosenberg et al. v. Marjorie Joyce A. Winchester.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Wednesday, April 29, 1998 (continued)

A076102 -- Viable Alternatives Consultants, Inc. v. Paradox Corporation et al.

The judgment and the order denying appellants' motion for attorney's fees are reversed. The trial court shall determine the amount of fees recoverable by Lucia Hummel, as the only party prevailing on the contract for purposes of section 1717. In all other respects, the judgment is affirmed. The parties shall bear their own costs on appeal. Parrilli, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

A077144 -- Darryl B. Cohen v. Airtouch Communications, Inc., et al., Ross Pacini.

The trial court did not abuse its discretion in approving the class action settlement agreement in this case. The judgment is affirmed. Phelan, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A077609 -- Conrad Carpenter v. California Institute of Man in Nature, Inc., et al.

We uphold the trial court's denial of attorney fees on the ground that the contract sued upon contains no provision for such fees. We also affirm the denial of damages for the alleged breach of a contract to convey the giant sugar pine tree known as "Big Bertha." Even if such a contract existed, appellants suffered no damage from the failure to transfer the tree, as they suffered no loss in value between the land actually conveyed and the land to be conveyed under the agreement.

On the cross-appeal, we reverse that portion of the judgment awarding CIMIN and Olmsted damages on the sixth and seventh causes of action of their cross-complaint and order the judgment amended accordingly.

Carpenter to recover costs on appeal and cross-appeal. Walker, J. We concur: Phelan, P.J., Corrigan, J. (Not for Publication.)

Wednesday, February 29, 1998 (continued)

A081071 -- In re Katrina B., a Person Coming Under the Juvenile Court Law.

The court takes judicial notice of its file in A080985 and grants the motion to dismiss the appeal in A081071. Pursuant to Welfare and Institutions Code section 366.26, subdivision (l), review was available only by extraordinary writ, as noted in our order of February 26, 1998, in A080985. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

DIVISION FOUR

A078830 -- In re Peter S., a Person Coming Under the Juvenile Court Law.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A079423 -- Mutual Materials Company v. Redwood Empire Aggregates et al.

The order striking the request for attorney's fees and imposing sanctions is affirmed. Respondent is awarded costs on appeal. Hanlon, P.J. We concur: Poché, J., McGuinness, J. (Not for Publication.)

DIVISION FIVE

A077772 -- Department of Industrial Relations, Division of Labor Standards Enforcement v. E.O.C. Ord, Inc., et al.

The judgment is affirmed. Costs on appeal to respondent. Jones, J. We concur: Peterson, P.J., Haning, J. (Not for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Wednesday, April 29, 1998

The Court met at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Dossee, J., Phelan, J., specially sitting for Division One, and B. Robbins, Deputy Clerk.

A075454 The Atchison, Topeka & Santa Fe Railway,
 v.
 Ransome Company et al.
Cause called and argued by Sanford Svetcov, counsel for appellant, and Robert Rosenberg, counsel for respondent. Cause ordered submitted.

At this time, Phelan, J. left the bench and Swager, J. took his place on the bench for the remainder of the session.

A079667 20th Century Insurance Co.,
 v.
 Chuck Quackenbush.
Cause called and argued by Gary Fontana, counsel for appellant, and Paul Gifford, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A077381 E.O. Tansev,
 v.
 AES Pacific, Inc. et al.
Cause called and argued by Gordon Erspamer, counsel for appellant, and Charles Middlekauff, counsel for respondent. Cause ordered submitted.

A074535/
A073149 Sharon Maxwell,
 v.
 Beverly Enterprises, Inc. et al.
Cause called and argued by Henry Lederman, counsel for appellant and cross-respondent, and Norman Pine, counsel for respondent and cross-appellant. Cause ordered submitted.

A076485

The People,

v.

Joseph Bell et al.

Cause called and argued by Victor J. Morse for appellant Bell, Philip Brooks for appellant Blueford, and Jeremy Friedlander, Deputy Attorney General, via teleconference, counsel for respondent. Cause ordered submitted.

Court recessed until 2:00 p.m.

Court reconvened at 2:00 p.m. Present: Strankman, P.J., Dossee, J., Swager, J. and N. Millner, Deputy Clerk.

- A078026 Lester Davis,
 v.
 Fireman's Fund Insurance Co. et al.
Cause called and argued by J. Russell Stedman, counsel for appellant, and R. Scott Erlewine, counsel for respondent. Cause ordered submitted.
- At this point in the proceedings, Presiding Justice Strankman left the bench and Justice Stein took his place on the bench. Justice Stein presided over the remainder of the session.
- A078350 Robert T. Adcock,
 v.
 Valley Forge Insurance Company.
Cause called and argued by Guy O. Kornblum, counsel for appellants, and Gary Selvin, counsel for respondent. Cause ordered submitted.
- A077714 James G. Hansell et al.,
 v.
 Santos Robinson Mortuary et al.
Cause called and argued by Kevin J. McInerney, counsel for appellants, and Daniel W. Winters, counsel for respondents. Cause ordered submitted.
- A078154 Susan Hauck et al.,
 v.
 Charles F. Hansen, Sr. et al.
Cause called and argued by Thomas Becker, counsel for appellant and cross-respondent and Kelly M. Walsh, counsel for respondent and cross-appellant. Cause ordered submitted.
- A077037/
A080742 The People,
 v.
 Ralph Dennis Moreland.;
 In re Ralph Moreland on Habeas Corpus.
Cause called and argued by David Y. Stanley, counsel for appellant, and Lisa Ashley, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A078555 The People,

v.

Jason Lee Hain.

Cause called and argued by E. Evans Young, counsel for appellant, and Gregg Lowder, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until Thursday, April 30, 1998 at 9:00 a.m.

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, April 30, 1998

DIVISION ONE

A074729 -- The People v. Stephen Louis Gaier.

The judgment is affirmed. Dossee, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

A075247 -- The People v. Ramon Garcia.

The judgment is affirmed. Dossee, J. We concur: Stein, Acting P.J., Swager, J. (Certified for Partial Publication.)

A075318 -- Jane S. Leov v. Bank of America, as Trustees, etc., et al.

The judgment is affirmed. Stein, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A077744 -- In re Kelly H., a Person Coming Under the Juvenile Court Law.

The orders of the juvenile court are affirmed. Dossee, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

A078265 -- In re Terrell S., a Person Coming Under the Juvenile Court Law.

The orders of the juvenile court are affirmed. Dossee, J. We concur: Strankman, P.J., Swager, J. (Not for Publication.)

Thursday, April 30, 1998, (continued)

A078415 -- Billie Jo Mouren v. Faisal Ibn Abdullah Al Saud, Graydon S. Staring.

The judgment appealed from is affirmed. Dossee, J. We concur: Strankman, P.J., Stein, J. (Not for Publication.)

DIVISION TWO

A082491 -- Carol Mardeusz v. The Superior Court of Sonoma County, Leo Magers, R.P.I.

By The Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

A079372 -- Linda Potts v. Tom Crawford, as County Superintendent, etc.

The judgment is affirmed. Lambden, J. We concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

DIVISION THREE

A074807 -- Jeanette M. Freeman v. First American Title Insurance Company.

The judgment is affirmed. Corrigan, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

Thursday, April 30, 1998 (continued)

A078789 -- The People v. James Lyle Vogeli.

Respondent concedes that appellant is entitled to credit for the period appellant was in custody beyond the one year attributable to the parole hold and parole revocation proceedings (May 3, 1996, to May 2, 1997) up until the date of the hearing which resulted in the preparation of the abstract of judgment (June 2, 1997). We therefore direct that the abstract of judgment be modified to give appellant 31 days of "actual local time" pursuant to section 2900.5 and 14 days of "local conduct credit" pursuant to section 4019, for a total of 45 days.

In all other respects, the judgment is affirmed. Walker, J. We concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

A080228 -- Franchise Tax Board of the State of California v. The Superior Court of San Francisco County, E. Floyd Kvamme et al., R.P.I.

We conclude that the term "final" as used by the Legislature in section 19384 means the last chronological notice of decision given by the Board. Because the last notice by the Board of its decision denying the rehearing and reaffirming its initial determination was given on November 13, 1996, the action was untimely, not having been filed within 90 days of that date. The peremptory writ of mandate shall issue directing respondent Superior Court to set aside and vacate its order overruling the petitioner Franchise Tax Board's demurrer and commanding it to enter an order sustaining the demurrer without leave to amend. Costs awarded to the petitioner. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Certified for Publication.)

A080229 --Franchise Tax Board of the State of California v. The Superior Court of San Francisco County, Gordon E. Moore et al., R.P.I.

We conclude that the term "final" as used by the Legislature in section 19384 means the last chronological notice of decision given by the Board. Because the last notice by the Board of its decision denying the rehearing and reaffirming its initial determination was given on November 13, 1996, the action was untimely, not having been filed within 90 days of that date. The peremptory

Thursday, April 30, 1998 (continued)

writ of mandate shall issue directing respondent Superior Court to set aside and vacate its order overruling the petitioner Franchise Tax Board's demurrer and commanding it to enter an order sustaining the demurrer without leave to amend. Costs awarded to the petitioner. Walker, J. We concur: Phelan, P.J., Parrilli, J. (Not for Publication.)

A080615 -- In re the Marriage of Sharon Meitrott and John Scavone.

Respondent's motion to dismiss the appeal is granted. The request for sanctions is denied. Respondent is awarded costs on appeal. Corrigan, J. We concur: Phelan, P.J., Parrilli, J.

DIVISION FOUR

A075898 -- The People v. Karl Wesley Archie.

The judgment is affirmed. Hanlon, P.J. We concur: Reardon, J., McGuinness, J. (Not for Publication.)

A076768 -- The People v. Kim McAdoo.

The judgment is affirmed. McGuinness, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A077157 -- John Liu v. Jerry C. Wang et al.

The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A078312 -- The People v. John Joseph Bendele.

The judgment is affirmed. McGuinness, J. We concur: Hanlon, P.J., Poché, J. (Not for Publication.)

Thursday, April 30, 1998 (continued)

A079206 -- The People v. Arturo Haro Vargas.

The judgment of conviction is affirmed. Poché, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

A079264 -- The People v. Clayton Versea.

The judgment and sentence imposed are affirmed. McGuinness, J. We concur: Hanlon, P.J., Reardon, J. (Not for Publication.)

A079285 -- The People v. Jorge Isaac Bernal.

Appellant was represented by counsel throughout these proceedings. There are no meritorious issues to be argued. The judgment is affirmed. Hanlon, P.J. We concur: Poché, J., Reardon, J. (Not for Publication.)

A079328 -- The People v. Andre Spencer.

Judgment affirmed. Reardon, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

A079495 -- The People v. Daniel Kole Larson.

The purported appeal from the order denying the suppression motion is dismissed. The judgment of conviction is affirmed. Poché, Acting P.J. We concur: Reardon, J., McGuinness, J.

A079589 -- RMT Landscape Contractors, Inc. v. City of San Leandro, West Bay Builders, Inc., R.P.I.

The judgment is affirmed. Reardon, J. We concur: Hanlon, P.J., McGuinness, J. (Not for Publication.)

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Thursday, April 30, 1998

The Court met at 9:00 a.m. in its courtroom at 303 - 2nd Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., Swager, J. and B. Robbins, Deputy Clerk.

- A078919 Robert Ulrich,
 v.
 City of Oakland.
Cause called and argued by Rocio V. Fierro, counsel for appellant, and Edward C. Casey, Jr., counsel for respondent. Cause ordered submitted.
- A079146 Veana Grace Silva-Pearson,
 v.
 Marin Co. Major Crimes Task Force et al.
Cause called and argued by John Govi, counsel for appellant, and David Skuljan, counsel for respondents. Cause ordered submitted.
- A078149/
A073541 Information Systems and Networks Corp.,
 v.
 Burns & Roe Securacom, Inc., et al.
Cause called and argued by Robert Ted Parker and Raymond E. Loughrey, counsel for appellant in the consolidated cases; and Donald Gagliardi and Terry Gordon, counsel for respondent the consolidated cases. Cause ordered submitted.
- A078321 Stephen P. Diamond et al.,
 v.
 Aetna Life Insurance Company.
Cause called and argued by Kent Mitchell, counsel for appellant. There was no appearance for respondent Aetna Life Insurance Company. Cause ordered submitted.

- A077193 The People,
 v.
 Warren Orey.
Cause called and argued by Thomas A. Schaaf, counsel for appellant, and
Moona Nandi, Deputy Attorney General, counsel for respondent. Cause
ordered submitted.
- A079031 The People,
 v.
 David Eugene Gutierrez.
Cause called and argued by Joan Wolff, counsel for appellant, and Martin
S. Kaye, Deputy Attorney General, counsel for respondent. Cause ordered
submitted.
- A080150 Inga E. Lazzareschi,
 v.
 Bartholomew W. Lazzareschi.
Cause called and argued by Thomas Knutsen, counsel for appellant, via
teleconference, and Inga Lazzareschi, respondent in pro per, via
teleconference. Cause ordered submitted.

Court recessed until 2:00 p.m.

Court reconvened at 2:00 p.m. Present: Strankman, P.J., Stein, J., Dossee, J., and N. Millner, Deputy Clerk.

- A079538 Mary Morrison,
v.
Peggy Tatro et al.
Cause called and argued by Mary Morrison, appellant in pro per, and
Alison Hershberger, counsel for respondent. Cause ordered submitted.
- A075542 Marie Grant,
v.
St. Francis Square Coop. et al.
Cause called and argued by Herbert W. Yanowitz, counsel for appellant,
and Eric P. Norland, counsel for respondent. Cause ordered submitted.
- A078074 Metro-Risk, Inc. et al.,
v.
Marsh & McLennan, Inc.
Cause called and argued by Lawrence Bernheim and Leroy Lounibos,
counsel for appellant, and Thomas W. Pulliam Jr., counsel for respondent.
Cause ordered submitted.
- A079112 Mission Lakes Homeowners,
v.
Board of Directors, East Bay Regional Park District.
Cause called and argued by Lynn Axelrod, counsel for appellant, and Roger
Beers, counsel for respondent. Cause ordered submitted.
- A079918 Montgomery L. Patterson,
v.
City of Livermore.
Cause called and argued by Steven M. McCarthy, counsel for appellant,
and Andrea Saltzman, counsel for respondent. Cause ordered submitted.

A079065 Joseph Albert Scallorn,
v.
Kirk-Mayer, Inc. et al.
Cause called and argued by Albert G. Stoll, counsel for appellant, and
Anjali Talwar, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED